

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ADRIAN REYNARD SMITH,  
Plaintiff,  
  
v.  
  
SAN FRANCISCO SHERIFF  
DEPARTMENT,  
Defendant.

Case No. [18-cv-05089-PJH](#)

**ORDER OF DISMISSAL**

Plaintiff, a detainee, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. The amended complaint was dismissed with leave to amend and plaintiff has filed a second amended complaint.

**DISCUSSION**

**STANDARD OF REVIEW**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007)

(citations omitted). Although in order to state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. The United States Supreme Court has recently explained the “plausible on its face” standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

### **LEGAL CLAIMS**

Plaintiff states that he was falsely arrested and his *Miranda* rights were violated. For relief plaintiff seeks to be released from custody.

“Federal law opens two main avenues to relief on complaints related to imprisonment: a petition for habeas corpus, 28 U.S.C. § 2254, and a complaint under the Civil Rights Act of 1871, Rev. Stat. § 1979, as amended, 42 U.S.C. § 1983. Challenges to the lawfulness of confinement or to particulars affecting its duration are the province of habeas corpus.” *Hill v. McDonough*, 547 U.S. 573, 579 (2006) (quoting *Muhammad v. Close*, 540 U.S. 749, 750 (2004)). “An inmate’s challenge to the circumstances of his confinement, however, may be brought under § 1983.” *Id.*

Habeas is the “exclusive remedy” for the prisoner who seeks “‘immediate or speedier release’” from confinement. *Skinner v. Switzer*, 131 S. Ct. 1289, 1293 (2011)

(quoting *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005)); see *Calderon v. Ashmus*, 523 U.S. 740, 747 (1998); *Edwards v. Balisok*, 520 U.S. 641, 648 (1997); *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). "Where the prisoner's claim would not 'necessarily spell speedier release,' however, suit may be brought under § 1983." *Skinner*, 131 S. Ct. at 1293 (quoting *Wilkinson*, 544 U.S. at 82). As a consequence, challenges to prison conditions traditionally have been cognizable only via § 1983, while challenges implicating the fact or duration of confinement must be brought through a habeas petition. *Docken v. Chase*, 393 F.3d 1024, 1026 (9th Cir. 2004).

In this case it was not clear the relief plaintiff sought or his specific claims. The amended complaint was dismissed with leave to amend to provide more information. In the second amended complaint, plaintiff states that he seeks to be released from custody. He states he was arrested on false charges and not read his *Miranda* rights. However, plaintiff indicates that the charges related to the arrest were dropped and he is still in custody due to a probation hold. If plaintiff is found to have violated probation, he may file a federal habeas petition once he has exhausted his remedies in state court.

To the extent plaintiff seeks to be released immediately, the court will not interfere with ongoing state proceedings. Under principles of comity and federalism, a federal court should not interfere with ongoing state criminal proceedings by granting injunctive or declaratory relief absent extraordinary circumstances. See *Younger v. Harris*, 401 U.S. 37, 43-54 (1971). Federal courts should not enjoin pending state criminal prosecutions absent a showing of the state's bad faith or harassment, or a showing that the statute challenged is "flagrantly and patently violative of express constitutional prohibitions." *Younger*, 401 U.S. at 46, 53-54 (cost, anxiety and inconvenience of criminal defense not kind of special circumstances or irreparable harm that would justify federal court intervention; statute must be unconstitutional in every "clause, sentence and paragraph, and in whatever manner" it is applied). Plaintiff has not demonstrated extraordinary circumstances to warrant intervention.

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**CONCLUSION**

The second amended complaint is **DISMISSED** without prejudice and this action is **CLOSED**. Plaintiff may file a federal habeas petition when the claims surrounding his probation hold or violation are properly exhausted in state court.

**IT IS SO ORDERED.**

Dated: February 8, 2019



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PHYLLIS J. HAMILTON  
United States District Judge

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ADRIAN REYNARD SMITH,  
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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 8, 2019, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Adrian Reynard Smith  
Father Alfred Center  
291 10th Street  
San Francisco, CA 94103

Dated: February 8, 2019

Susan Y. Soong  
Clerk, United States District Court



By: \_\_\_\_\_  
Kelly Collins, Deputy Clerk to the  
Honorable PHYLLIS J. HAMILTON